IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION LODGING NO.989 OF 2006

Dattatray Eknath Mahadik & Ors..Petitioners

Vs.

Dy. Director of Education & Ors..Respondents

Mr. Sunil Dighe, for the Petitioners
Mr. M.D. Naik, AGP for Respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 27th April,2006

P.C.:

. Rule. Heard forthwith.

2. Petitioner Nos. 1 to 6 are teaching staff and Nos. 7 to 14 are non-teaching staff all employed at the Ahilya Vidyalaya (High School) run by V.V.M. Trust, Abhudaya Nagar, Mumbai. All of them are permanent employees. The short question raised by the petitioners in this petition is whether employees of private schools after completing 12 years of qualifying service in the same school which was initially un-aided and subsequently aided are eligible for senior scale/time bound promotion scale and thereafter selection grade and whether once the Senior scale time bound scale is granted, it is open to the respondent authorities to withdraw the same and order recovery even without giving an opportunity to the petitioners.

3. The Ahilya Vidyalaya (High School) is recognised school and has been receiving cent percent grant with effect from 1st October, 1988. The School was established in June, 1977 after

following due procedure and approval was granted on 19th March, 1979. From the inception the school was having divisions from 5th standard to 10th standard. The recognition continues till date and it fulfils all necessary criteria. The petitioners were employed prior to 1st October, 1988 received approval for their appointment on 8th March, 1989 from the date of respective initial appointment. The Petitioner Nos. 1, 3,5 and 6 were granted senior scale between the years 1990-94. That was done on those petitioners completing 12 years of service on respective dates. It was, however, withdrawn with effect from 1999. The payments made were also recovered from the salary of the said 4 teachers. As a consequences thereof the school also did not forward the case of the other staff who had completed 12 years service. The proposals were, however, forwarded and approved on completion of 12 years from 1st October, 1988. The petitioners have relied on various unreported judgments as set out in para.15 of the petition, being Writ Petition No.2745 of 2002 in the case of **Mr. Indra Pratap Singh vs. The President, Guru Nanakl Darbar Education Society & Ors.,** decided on 28th **January, 2003.** As prima facie we found that the issue was covered by the judgment of this Court we had asked Counsel for the Government as to their stand. No reply contrary to the judgment of this Court has been filed.

4. The question to be answered is whether the

services in the same school which was recognised but unaided has to be computed for the purpose of calculating completion of 12 years or is only service on the school receiving grant to be counted for the purpose of computing 12 years of service of recognised school covered by the provisions of M.E.P.S. Act. Whether the school is aided or not the School has to pay the same pay scales to their staff whether it is teaching and non-teaching staff. Once that be the case whether the school receives grant in aid or not would be immaterial as long as the teachers have been appointed and their appointments have been approved. What would be relevant would be the first date of initial regular appointment. We see no reason as to why only services after receiving grant in aid has to be counted. Such an exercise would be clearly arbitrary and discriminatory. A harmonious construction, therefore, would be to treat all teachers alike for the purpose of senior time scale.

5. In Indra Pratap Singh (supra) on behalf of the State it had been contended that as per clause 2 of G.R,. dated 13th September, 1990 and G.R. Dated 31st August, 2001 in order to grant senior pay scale to the petitioners 12 years should have been counted from 1st April, 1986 i.e. the date on which the school received grant. That contention was rejected by holding that on a fair interpretation of G.R. dated 13th September, 1990 it cannot be said that 12

years in aided school is a must for fixation of senior scale. Reliance was placed on the judgment of another Division Bench of this Court in Writ Petition No.1346 of 2000 in the case of **Devre S.T. and Ors. vs. Accounts Officer, Education Department (Secondary), Nasik & Ors.** decided on 14th September, 2000. The learned Bench held that the G.R. nowhere prescribes that entire service of 12 years has to be in aided school and as staff teachers on completion of 12 years service is entitled to revised pay scale. The learned Division Bench in Indra Pratap Singh (supra) held that the ratio of that judgment must apply to the facts before it and accordingly allowed the petition. We have no hesitation for the aforesaid reason and what we have set out earlier to hold that the ratio of the judgment would be applicable also to the case of the petitioners herein. In other words the petitioners service in the unaided school from the date of recognition and the date of their regular appointment will have to be the basis for grant of the senior scales as applicable to them.

6. In the light of that petition is allowed in terms of prayer clause (a). In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO, J.)

(ANOOP V. MOHTA, J)